

EXHIBIT 1



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September 14, 2018

BY ELECTRONIC MAIL (Samuel.Dolinger@usdoj.gov)

Samuel Dolinger
Assistant United States Attorney
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007
Tel: (212) 637-2677

Re: Case 1:18-cv-04559; Notice of Outstanding FOIA Appeals

Dear Mr. Dolinger,

Please allow this letter to serve as notice that the parties you represent in the above-referenced litigation, the Animal and Plant Health Inspection Service (APHIS) and the United States Department of Agriculture (USDA) have, to date, failed to respond to two additional Freedom of Information Act (FOIA) Appeals submitted by the American Society for the Prevention of Cruelty to Animals (ASPCA).

On August 03, 2018 the ASPCA submitted a FOIA Appeal relating to the agency's May 4, 2018 response to the ASPCA's July 31, 2017 request seeking June 2017 inspection reports and photographs for dog breeders and dealers. The agency acknowledged receipt of this appeal on August 8, 2018 and assigned a target date for response of August 31, 2018. The tracking number assigned by the agency for this appeal is 2017-APHIS-0583-F.

On August 8, 2018 the ASPCA submitted a FOIA Appeal relating to the agency's May 10, 2018 response to the ASPCA's March 27, 2017 request seeking February 2017 inspection reports and photographs for dog breeders and dealers. The agency acknowledged receipt of this appeal on August 8, 2018 and assigned a target date for response of September 6, 2018. The tracking number assigned by the agency for this appeal is 2018-APHIS-00462.

As of today's date, the agencies have failed to respond to the ASPCA's August 3rd and August 8th, 2018 FOIA Appeals and the ASPCA has received no further communication from the agencies regarding these appeals. As you are aware, the matter currently pending before the Southern District of New York is a direct result of the agencies' failure to respond to the ASPCA's previous FOIA Appeals. Given the agencies' continued disregard for not only its own deadlines, but the deadlines prescribed by law, we request your assistance in ensuring that the agencies you represent in this action promptly respond to the ASPCA's appeals in accordance with the FOIA.

As the ASPCA has made clear in its Complaint, the agencies' failure to promptly comply with the FOIA has and continues to impede important components of the ASPCA's work to

prevent animal cruelty, including its ability to monitor the agencies' enforcement of the Animal Welfare Act (AWA). Furthermore, the agencies' continued failure to respond to the ASPCA's FOIA Appeals forces the ASPCA either to pursue litigation to obtain records the agencies are mandated by law to release or to forfeit its right to the requested records. As you know, the Department of Justice's own guidance emphasizes the importance of the FOIA appeal process, noting that it "allows the top-level officials of an agency the opportunity to use their expertise and experience to review the matter and to make an administrative record, potentially obviating the necessity of judicial review." *Department of Justice Guide to the Freedom of Information Act, Litigation Considerations*, p. 31 (emphasis added). Even if the agencies' response to the ASPCA's FOIA Appeals ultimately results in an unfavorable decision, prompt response in accordance with the FOIA will, at a minimum, help define the scope of litigation and narrow the issues presented to the Court. Accordingly, you should also consider this letter a good faith effort to avoid certain costs of litigation contemplated by 5 U.S.C. § 552(a) (4) (E).

Please let me know by Wednesday, September 19, when we can expect responses from the agencies to the ASPCA's August 3rd and August 8th appeals. Thank you for your attention to this matter.

Sincerely,

/s/ Robert G. Hensley, Jr. Esq.
Legal Advocacy Senior Counsel
The American Society for the
Prevention of Cruelty to Animals

cc: Tamara Y. Feliciano, Esq., Legal Advocacy Legislative Counsel, ASPCA
Jennifer H. Chin, Esq., Vice President, Legal Advocacy, ASPCA
Erin Estevez, Esq., Cooley, LLP

From: Dolinger, Samuel (USANYS) <Samuel.Dolinger@usdoj.gov>
Sent: Friday, September 14, 2018 3:42 PM
To: Robert Hensley
Cc: Tamara Feliciano; Jennifer Chin; Estevez, Erin
Subject: RE: Notice regarding outstanding FOIA appeals

Robert,

I have forwarded your letter to the agency. However, the requests to which you refer in your letter are not in litigation; accordingly, the appropriate point of contact is APHIS, not this Office. You may reach Ms. Andrea McNally of APHIS by e-mail at andrea.c.mcnally@aphis.usda.gov.

Samuel Dolinger
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Southern District of New York
86 Chambers Street, 3rd Floor
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From: Robert Hensley <Robert.Hensley@aspca.org>
Sent: Friday, September 14, 2018 11:09 AM
To: Dolinger, Samuel (USANYS) <SDolinger@usa.doj.gov>
Cc: Tamara Feliciano <Tamara.Feliciano@aspca.org>; Jennifer Chin <Jennifer.Chin@aspca.org>; Estevez, Erin (eestevez@cooley.com) <eestevez@cooley.com>
Subject: Notice regarding outstanding FOIA appeals

Sam:

Attached please find a letter to you regarding two additional FOIA appeals submitted by the ASPCA to which APHIS/USDA have not timely responded.

Sincerely,

Robert G. Hensley, Jr., Esq.
Legal Advocacy Senior Counsel
Policy, Response & Engagement
ASPCA
917.716.5105 (mobile)

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